



October 4, 2000

Mr. Roger Lee  
Law Offices of Roger Lee  
Attorneys and Counselors  
1401 Holliday Street  
Union Square Building, Suite 204  
Wichita Falls, Texas 76301

OR2000-3807

Dear Mr. Lee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139789.

Midwestern State University (the "university"), which you represent, received a request from a woman whose daughter was enrolled at the university for "any records having my [the mother's] name and/or my social security number [number given] including computer files about me maintained at" the university. You interpret this request to be for the daughter's Pell Grant application materials. You state that you do not maintain these records and, in addition, claim that the requested information is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted documentation.

We first note that you assert that the university does not maintain the requested information. Your brief to us indicates that "no records on these applications are kept by Midwestern State University, and that they are sent to the U. S. Department of Education, and are to our knowledge not even kept by D.O.E. They are downloaded by computer." You also provided us a letter to the requestor in which the university director of financial aid informs her that "the Pell Grant Processors have confirmed the FAFSA application is destroyed at their facility after the information is scanned into their electronic system. As has been relayed to me [the director of financial aid] by the Pell Grant Processor, a hard copy of the FAFSA application no longer exists." A governmental body is not required to obtain information not in its possession in order to respond to a request for public information. Open Records Decision No. 558 (1990). However, "the media on which public information is recorded" includes "a magnetic, optical, or solid state device that can store an electronic signal," and

the form in which such media exist includes a "printout, . . . and a voice, data, or video representation held in computer memory." Gov't Code § 552.002(b),(c). Because we cannot be certain from your brief that you do not maintain electronically stored responsive information, we will address your claimed exception.

You have not submitted the requested information for our review, but you assert that the requested information is excepted from required public disclosure under federal law. Section 552.101 of the Government Code excepts from disclosure "information considered confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that the requested documents are education records that must be withheld pursuant to the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

Section 552.114(a) of the Government Code requires that the university withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Further, section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent or by the student, if 18 or older or attending a post-secondary educational institution. See 20 U.S.C. § 1232g(b)(1), (d). "Education records" are those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." See Open Records Decision Nos. 332 (1982), 206 (1978). In the present case, because the information requested here would necessarily relate to one particular student, we find that

you cannot release the information to the public without personally identifying the student. Therefore, you must not release the requested information to the public without first obtaining the consent of the adult student.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f).

If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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<sup>1</sup>However, we note that a post-secondary educational institution is not required to make available to a student information contained in financial records of the parents. 20 U.S.C. § 1232g(a)(1)(C)(i). This requestor should contact the Department of Education with any questions she has about access to her own financial information under federal regulations. The department may be reached at (202) 260-3887, or by mail at 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Michels Anderson".

Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/pr

Ref: ID# 139789

cc: Ms. Teresa Gaiotti  
12210 East Maxwell  
E 304  
Spokane, Washington 99206  
(w/o enclosures)